

United States District Court
District of Massachusetts

RECEIPT # 66545
AMOUNT \$ 150
SUMMONS ISSUED Y-1
LOCAL RULE 4.1 _____
WAIVER FORM _____
MCF ISSUED _____
BY DPTY. CLK. M
DATE 12-17-09

DANIEL M. FOLEY, PETER L.
FURNARI, and FRANK E.
SILVER, III, individually and as
representatives of certain retired
employees of USM Corporation
Plaintiffs
v.
USM CORPORATION
Defendant

Civil Action No.

01-12644 JLT

MAGISTRATE JUDGE Dein

COMPLAINT

This is an action by three retired employees of USM Corporation (herein USM), individually and as representatives of a class of retired employees of that corporation, for damages and to compel USM to continue to make payments to the retiree class under the terms of an approved bankruptcy court plan to defray a portion of the cost of their health insurance coverage.

1. The Court's jurisdiction is based on section 502 of the Employee Retirement Income Security Act, 29 U.S.C. § 1132.

2. USM Corporation (herein called USM) is a corporation engaged in the manufacture of equipment for the shoemaking industry with its principal place of business in Haverhill, Massachusetts.

3. The plaintiffs, Daniel M. Foley, Peter L. Furnari and Frank E. Silver III, are former employees of USM or its corporate predecessor who retired under the terms of a collective bargaining agreement between USM and Local 271, United Electrical Workers. The agreement provided lifetime health insurance coverage for retired employees.

4. The named plaintiffs bring this action on behalf of all retired employees of USM who were entitled to health insurance coverage under the terms of the agreement or agreements between USM and Local 271, United Electrical Workers in effect on the date of their retirements, and who are covered by the approved bankruptcy court plan. There are approximately 25-50 such retired employees, all of whom are too numerous to join in this action individually, but who have the same claim as the named plaintiffs, and whose interests are fairly and adequately represented the named plaintiffs. The members of the proposed class share common questions of law and fact with the named plaintiffs.

5. In the year 2001 USM Corporation filed for protection under Chapter XI of the Bankruptcy Act, 11 U.S.C. § 1101, et. seq. In re USM Corporation f/k/a/ Ablekind USA, Inc. In April, 2002 the United States Bankruptcy Court entered an order confirming USM's Third Plan of Reorganization.

6. The Third Plan of Reorganization, as confirmed by the Bankruptcy Court (herein called the Plan), provided in pertinent part as follows:

4.4 Class Four Hourly Retirees (aka "Union") is impaired, inasmuch as the contract with the Union, U.E. Local 271, will be rejected and the Health Benefits modified pursuant to 11 U.S.C. §§ 1113 and 1114, and pursuant to 11 U.S.C. §1129. Documentation pertaining to the proposed modification shall be mutually acceptable to counsel for Debtor and Hourly Retirees, and shall be available to interested parties in the form of a proposed Stipulation prior to the hearing on confirmation, and shall be submitted to the Court by joint motion of the parties for findings and approval at the time of the hearing on confirmation. Upon confirm, such documentation shall become part of Debtor's Confirmed Plan of Reorganization. Subject to the terms of such documentation, payments shall be made as follows:

i) INDIVIDUALS UNDER AGE 65

USM Corporation will maintain its existing Aetna US HealthCare Plan until 5/31/02, and will contribute a monthly sum toward each participant's premium. After May 31, 2002, upon proof of individual coverage, USM will pay each individual a monthly cash sum in lieu of providing health care coverage. The USM monthly payments will be as follows:

Single	\$175
Dual	\$300
Family	\$500

ii) INDIVIDUALS OVER AGE 65

USM will pay up to \$80.00 toward the cost of each individual's cost of Supplemental B Medicare coverage. USM will continue to provide coverage through a group plan with Harvard Pilgrim and Tufts. Those who wish to participate in the company Plans must pay the difference between the cost of the group plan and \$80.00, and have their monthly contribution deducted from their pension and forwarded to USM.

Individuals who do not wish to participate in the group plans or who live outside the area covered by Harvard Pilgrim and Tufts must obtain Individual Supplemental B coverage in their area. Upon proof of coverage, USM will pay up to \$80.00 monthly to each individual.

A stipulation signed by Local 271, United Electrical, Radio and Machine Workers of America and USM Corporation, f/k/a Ablekind USA, Inc., which is an exhibit to the Third Amended Plan of Reorganization, provides, in part: "Retirees, their spouses and their covered dependents will be covered by the health insurance plan appended hereto for life."

7. Thereafter and until about July 2004 USM made the payments required by the Plan to the plaintiffs and the class they seek to represent. But since about August, 2004, USM has failed to make these payments to the plaintiffs and the class they seek to represent.

8. The plaintiffs and the class they represent are retired and depend on the payments required by the Plan to provide full health care coverage. Without the payments required by the Plan, the plaintiffs and the class they seek to represent are in immediate danger of being unable to afford to pay the entire cost of the health insurance coverage. and they are suffering irreparable injury.

WHEREFORE the plaintiffs pray:

1. That the Court issue preliminary and final injunctive relief requiring defendant USM to make the payments to the plaintiffs and the class they represent required under the terms of the Plan and to continue such payments until further order of the Court;

2. For as award of damages;

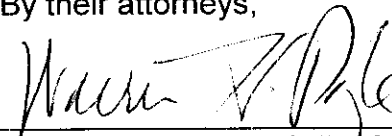
3. For their costs and attorneys' fees; and

4. For such other and further relief as the Court may deem proper and just.

Respectfully submitted,

DANIEL M. FOLEY, PETER L.
FURNARI and FRANK E. SILVER, III,
individually and as representatives of
certain retired employees of USM
Corporation

By their attorneys,

A handwritten signature in black ink, appearing to read "Warren H. Pyle", is written over a horizontal line.

Warren H. Pyle, BBO #408400
Pyle, Rome, Lichten, Ehrenberg
& Liss-Riordan, P.C.
18 Tremont Street, Suite 500
Boston, MA 02018
(617) 367-7200

Dated: December 17, 2004

Warren/USM retiree health complaint November 2004

JS 44 (Rev. 3/99)

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Daniel M. Foley, Peter L. Furnari, and Frank E. Silver, III, individually and as representatives of certain retired employees of USM Corporation

(b) County of Residence of First Listed Plaintiff Essex
(EXCEPT IN U.S. PLAINTIFF CASES)

DEFENDANTS

USM Corporation

County of Residence of First Listed
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

(c) Attorney's (Firm Name, Address, and Telephone Number)

Warren H. Pyle
Pyle, Rome, Lichten, Ehrenberg & Liss-Riordan
18 Tremont St., Ste. 500, Boston, MA 02108
(617) 367-7200

Attorneys (If Known)

04-12614 JLT

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State ☐ 1 ☐ 1 Incorporated or Principal Place of Business in This State ☐ 4 ☐ 4
- Citizen of Another State ☐ 2 ☐ 2 Incorporated and Principal Place of Business in Another State ☐ 5 ☐ 5
- Citizen or Subject of a Foreign Country ☐ 3 ☐ 3 Foreign Nation ☐ 6 ☐ 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 362 Personal Injury—Med. Malpractice <input type="checkbox"/> 365 Personal Injury—Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIW C/DIW W (405(g)) <input type="checkbox"/> 864 SSD Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Legislation <input checked="" type="checkbox"/> 791 Empl. Ret. Inc. Security Act		

V. ORIGIN (PLACE AN "X" IN ONE BOX ONLY)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

29 U.S.C. §1132

VII. REQUESTED IN COMPLAINT: ☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 **DEMAND \$** **CHECK YES only if demanded in complaint:** **JURY DEMAND:** ☐ Yes ☒ No**VIII. RELATED CASE(S) IF ANY** (See instructions):

N/A

JUDGE
E

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

December 17, 2004

Warren H. Pyle

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

1. TITLE OF CASE (NAME OF FIRST PARTY ON EACH SIDE ONLY) Daniel M. Foley, et al. v.
USM Corporation

2. CATEGORY IN WHICH THE CASE BELONGS BASED UPON THE NUMBERED NATURE OF SUIT CODE LISTED ON THE CIVIL COVER SHEET. (SEE LOCAL RULE 40.1(A)(1)).

- I. 160, 410, 470, R.23, REGARDLESS OF NATURE OF SUIT.
- XX II. 195, 368, 400, 440, 441-444, 540, 550, 555, 625, 710, 720, 730, 740, 790, 791, 820*, 830*, 840*, 850, 890, 892-894, 895, 950. *Also complete AO 120 or AO 121 for patent, trademark or copyright cases
- III. 110, 120, 130, 140, 151, 190, 210, 230, 240, 245, 290, 310, 315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 370, 371, 380, 385, 450, 891.
- IV. 220, 422, 423, 430, 460, 510, 530, 610, 620, 630, 640, 650, 660, 690, 810, 861-865, 870, 871, 875, 900.
- V. 150, 152, 153.

3. TITLE AND NUMBER, IF ANY, OF RELATED CASES. (SEE LOCAL RULE 40.1(G)). IF MORE THAN ONE PRIOR RELATED CASE HAS BEEN FILED IN THIS DISTRICT PLEASE INDICATE THE TITLE AND NUMBER OF THE FIRST FILED CASE IN THIS COURT.

N/A

4. HAS A PRIOR ACTION BETWEEN THE SAME PARTIES AND BASED ON THE SAME CLAIM EVER BEEN FILED IN THIS COURT?

YES

NO

5. DOES THE COMPLAINT IN THIS CASE QUESTION THE CONSTITUTIONALITY OF AN ACT OF CONGRESS AFFECTING THE PUBLIC INTEREST? (SEE 28 USC §2403)

YES

NO

IF SO, IS THE U.S.A. OR AN OFFICER, AGENT OR EMPLOYEE OF THE U.S. A PARTY?

YES

NO

6. IS THIS CASE REQUIRED TO BE HEARD AND DETERMINED BY A DISTRICT COURT OF THREE JUDGES PURSUANT TO TITLE 28 USC §2284?

YES

NO

7. DO ALL OF THE PARTIES IN THIS ACTION, EXCLUDING GOVERNMENTAL AGENCIES OF THE UNITED STATES AND THE COMMONWEALTH OF MASSACHUSETTS ("GOVERNMENTAL AGENCIES"), RESIDING IN MASSACHUSETTS RESIDE IN THE SAME DIVISION? - (SEE LOCAL RULE 40.1(D)).

YES

NO

A. IF YES, IN WHICH DIVISION DO ALL OF THE NON-GOVERNMENTAL PARTIES RESIDE?

EASTERN DIVISION

CENTRAL DIVISION

WESTERN DIVISION

B. IF NO, IN WHICH DIVISION DO THE MAJORITY OF THE PLAINTIFFS OR THE ONLY PARTIES, EXCLUDING GOVERNMENTAL AGENCIES, RESIDING IN MASSACHUSETTS RESIDE?

EASTERN DIVISION

CENTRAL DIVISION

WESTERN DIVISION

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME Warren H. Pyle

ADDRESS Pyle, Rome, Lichten, Ehrenberg & Liss-Riordan, 18 Tremont St., Ste. 500,

TELEPHONE NO. (617) 367-7200

Boston, MA 02108